



Notice of Appeal From the Primary Examiner to the
Board of Patent Appeals and Interferences (37 CFR 1.191)

Date of Mailing: April 18, 2006

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In the United States Patent and Trademark Office

In re application of: James P. Elia

Docket No.: Case 1

Serial No. 09/064,000

Group No.: 1646

Filed: April 21, 1998

Examiner: Elizabeth C. Kemmerer, Ph.D.

For: METHOD FOR GROWTH OF SOFT TISSUE

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited
with the United States Postal Service as First Class Mail in
an envelope addressed to MAIL STOP AF, Commissioner for
Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

APRIL 18, 2006

Michael K. White 4/18/06
Signature Date of Signature

MAIL STOP AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant hereby appeals to the Board from the decision of the Primary Examiner mailed October 20, 2005 finally rejecting claims 382-394.

At this time, an Advisory Action regarding Applicant's Response After Final Rejection Under 37 CFR § 1.113 (mailed November 29, 2005) has not been received. In a voice mail to the undersigned attorney on April 17, 2006, Examiner Kemmerer advised that she would work on the Advisory Action during the week of April 17, 2006. Inasmuch as the six-month period following the Final Rejection of October 20, 2005 expires on April 20, 2006, and an Advisory Action has not been received, Applicant believes that it is necessary to file the instant Notice of Appeal to avoid abandonment of the application. To perfect such Notice of Appeal, Applicant has been forced to obtain and pay for a three-month extension of time. Obviously, the Examiner's failure to issue a timely Advisory Action has resulted in extra cost to Applicant. Such failure to issue a timely Advisory Action is not understood because: 1) The instant application should have been accorded "special" status due to its effective filing date of April 27, 1993; and 2) Applicant responded to the Final Rejection within two months, and Applicant understands that the Patent and Trademark Office's practice is to respond, via an Advisory Action, within one month (in this case, by December 29, 2005) to responses filed within two months of a Final Rejection.

As may be seen above, Applicant has been prejudiced by a lack of a timely Advisory Action. Accordingly, Applicant respectfully requests that the \$510 extension of time fee required to perfect the instant Notice of Appeal be refunded to Applicant's attorney. Applicant would have been able to file a Notice of Appeal without need for and payment of an extension of time had a timely advisory Action been issued.

Inasmuch as Applicant has not received an Advisory Action, Applicant reserves the right to supplement the instant Notice of Appeal.

The item(s) checked below are appropriate:

1. Status of Applicant

This application is on behalf of
☒ a small entity

04/24/2006 BABRAHA1 00000068 09064000

01 FC:2401 250.00 OP

04/24/2006 BABRAHA1 00000068 09064000

02 FC:2253 510.00 OP

2. Fee for Filing Notice of Appeal

Pursuant to 37 CFR 1.17(e) the fee for filing the Notice of Appeal is:

☒ a small entity

Notice of Appeal fee due: \$ 250.00

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3. **Extension of Term**

a) ☒ Extension requested:

<u>Extension (months)</u>	<u>Fee for small entity</u>
one month	\$ 60.00
two months	\$ 225.00
three months	\$ 510.00
four months	\$ 795.00
five months	\$1,080.00

☒ Request Extension for 3 month(s) = Fee \$ 510.00 Extension fee due: \$ 510.00

☐ An extension for _____ months has already been secured and the fee paid; therefore \$_____ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ 510.00

OR

b) ☐ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

4. **Total Fee Due**

☒ The total fee due is:

☒ Notice of Appeal fee \$250.00

☒ Extension fee (if any) \$510.00


Total Fee Due: \$ 760.00

5. **Fee Payment**

☒ Attached is Check No. 1088 in the sum of \$ 760.00

Date: April 18, 2006

Reg. No.: 26,611



Signature of attorney

Gerald K. White

Type or print name of attorney

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